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FISCAL IMPACT STATEMENT

LS 7514

BILL NUMBER: SB 535

NOTE PREPARED: Jan 11, 2011

BILL AMENDED:

SUBJECT: Public Access Issues.

FIRST AUTHOR: Sen. Walker

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Pubic Access and Open Door Laws:* This bill requires a public agency to: (1) allow inspection or copying; or (2) make copies; of a public record within a reasonable time after the request is received by the agency. It provides that a court may impose a civil penalty against an officer or management level employee of a public agency. It provides that the court may impose a civil penalty of: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations. It also provides that a court may: (1) impose only one civil penalty against an individual in an action even if the court finds that the individual committed multiple violations; and (2) impose another civil penalty against an individual in a separate action. The bill provides that if an officer of a state or local government agency orders a management level employee to: (1) not give proper notice of a public meeting or executive session; or (2) deny or interfere with a person's request to inspect or copy a public document; the employee is not subject to a civil penalty for violating the statute.

The bill provides that a public agency may withhold personal information from public disclosure regarding an individual less than 18 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. It gives a public agency the discretion whether to disclose a public record requested by an offender containing personal information relating to a judge, law enforcement officer, or family member of a judge or law enforcement officer.

Request for Notices: The bill provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). It provides that a court may not declare a governmental action

void for failure to give notice by electronic mail or posting on the local government agency's web site, if the agency made a good faith effort to comply with the statute.

Review of Public Records In Camera: The bill requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the Public Records Act. It provides that if a formal complaint is filed, the Public Access Counselor shall review public records in camera without redaction (excluding redacted information that is the work product of an attorney) to determine whether the redaction of the records violates the access to Public Records Act. The bill also provides that unredacted documents that are in the possession of the Public Access Counselor for in camera inspection are confidential while in the possession of the Public Access Counselor.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Review of Public Records In Camera:* This provision could increase costs for public agencies that are required to provide an in camera inspection index to the Public Access Counselor. The index is required to include the reasons and explanations of why the documents, or any part of the documents, are alleged to be exempt from disclosure. Any increase in costs will depend upon the extent to which formal complaints are filed regarding possible violations of the Public Records Act resulting from redacted public agency records.

Background Information - Under IC 5-14-1.5-2 "public agency" means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
 - (A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or
 - (B) audit by the State Board of Accounts.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the commission.
- (7) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the commission.

Explanation of State Revenues: Revenue to the state General Fund could increase due to civil penalties imposed upon officers or management level employees of public agencies if they intentionally:

- (1) Fail to give proper notice of a regular meeting, special meeting, or executive session.
- (2) Take final action outside a regular meeting or special meeting.
- (3) Participate in a secret ballot during a meeting.
- (4) Discuss in an executive session subjects not eligible for an executive session.
- (5) Fail to prepare a memorandum of a meeting required by IC 5-14-1.5-4.

- (6) Participate in at least one gathering of a series of gatherings under IC 5-14-1.5-3.1.
- (7) Deny or interferes with a person's request for inspection or copying of a public record if the record is subject to disclosure by law.
- (8) Charge a copying fee that exceeds the amount permitted.

The bill allows a court to assess a civil penalty of not more than \$100 for the first violation, and not more than \$500 for each additional violation of the provisions above. The individual is personally liable for any civil penalty imposed. The penalties will be deposited in the state General Fund. The amount of penalties that will be collected is indeterminable because it will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

Explanation of Local Expenditures: *Request for Notices:* The bill provides that if a local government agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail (if the agency has the capacity to send electronic mail); or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Any increase in expenditures should be minimal.

Review of Public Records In Camera: Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

Explanation of Local Revenues:

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources:

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